

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 97-0336  
CLAIM FOR REFUND — SALES/USE TAX  
FOR THE YEARS 1993 THROUGH 1995

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Sales/Use Tax — Safety Equipment**

**Authority:** 45 IAC 2.2-5-8(c); U.S. Steel Corporation (1981), Ind. App., 425 N.E.2d 659

Taxpayer protests the denial of the claim for refund of sales taxes paid on earplugs.

**II. Sales/Use Tax — Refund Statute of Limitations**

**Authority:** IC 6-8.1-9-1

Taxpayer protests the denial of the claim for refund of sales taxes paid in 1993 for invoices billed in 1992.

**STATEMENT OF FACTS**

Taxpayer is a steel foundry that manufactures components for large equipment and varied shapes and sizes of valves. All components are manufactured through a molding process. Taxpayer utilizes several procedures to complete the molding/casting process. In the grinding area, power equipment is used to grind rough edges and seams. In the flame wash process, arc welders remove any defects or flaws. The blast washing process is performed by using high-powered guns to shoot a steady spray of small steel pellets against the casting to remove rough edges and burrs. Employees in all production areas wear safety equipment. This equipment includes face shields, aprons, gloves, respirators, and earplugs. Taxpayer claims a refund for sales/use tax paid on earplugs.

Taxpayer also claims a refund for tax paid on exempt purchases with invoices billed in 1992 but paid in 1993.

Additional facts will be provided below, as necessary.

**I. Sales/Use Tax — Safety Equipment**

**DISCUSSION**

Taxpayer claims earplugs are worn by its employees for the sole purpose of preventing hearing damage or loss due to the extreme noise levels created by the production equipment. Taxpayer cites Department Regulation 45 IAC 2.2-5-8(c) which exempts from sales tax any equipment "directly used in the production process; i.e., they have an immediate effect on the article being produced." Section (c) goes on to state, "property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process..." The section further provides examples of exempt equipment. Taxpayer argues 45 IAC 2.2-5-8(c)(2)(F) exempts earplugs from sales tax. 45 IAC 2.2-5-8(c)(2)(F) states:

Safety clothing or equipment which is required to allow a worker to participate in the production process *without injury* or to prevent contamination of the product during production. Emphasis added.

Taxpayer argues its employees, without earplugs, could not participate in the production process without injury.

Taxpayer provides an article explaining OSHA's limits for exposure to noise. OSHA's "Action Level" for eight hour noise exposure is 85 decibels. Taxpayer states the measured decibel levels in its production areas surpass 90.

Taxpayer also points out its employees usually work ten hour shifts so they would be exposed to an even greater risk.

Taxpayer next cites U.S. Steel Corporation (1981), Ind. App., 425 N.E.2d 659, which found personal protective equipment "passed beyond the mere function of protecting the worker to become an intimate part of production itself." The equipment at issue in U.S. Steel included goggles, masks, hoods, gloves, aprons, etc. The court found the purpose of the personal protective equipment was to make production (of steel) possible given the extreme temperatures, gaseous fumes, and intense light and noise. Taxpayer argues the purpose of the earplugs are comparable to the personal protective equipment addressed in U.S. Steel.

Taxpayer claims all earplugs at issue were worn by employees engaged in the production process. Taxpayer submitted a listing of the date and amount of earplug purchases.

**FINDING**

Taxpayer's protest is sustained. Taxpayer has sufficiently proven earplugs were necessary for employees to participate in the production process without injury.

**II. Sales/Use Tax — Refund Statute of Limitations**

**DISCUSSION**

Taxpayer also protests the denial of a refund claim for invoices dated in 1992 but not paid until 1993. Taxpayer argues the statute of limitations on refund claims had not run in regards to these invoices pursuant to IC 6-8.1-9-1. IC 6-8.1-9-1 states in pertinent part:

(a) If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for refund with the department. In order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

(1) The due date of the return.

(2) The date of payment.

For purposes of this section, the *due date for a return* filed for the state gross retail or use tax,... is the *end of the calendar year which contains the taxable period* for which the return is filed... Emphasis added.

The Department denied these invoices included in taxpayer's claim for refund as they were dated in 1992. The Department finds the due date for the sales tax return was the end of the calendar year which contained the taxable period. The calendar year which contained the taxable period was 1992. Pursuant to IC 6-8.1-9-1, the taxpayer had three years from the latter of the two dates in which to timely file a claim for refund. The date of payment was later than the due date for the return, therefore, taxpayer had three years from the date of payment. Taxpayer filed its claim for refund on December 30, 1996. Taxpayer has failed to provide the Department with evidence that these invoices were paid on or after December 30, 1993.

#### **FINDING**

Taxpayer's protest is denied. Taxpayer failed to timely file its claim for refund.